HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 27, 2015
84th Legislature, Number 57
The House convenes at 10 a.m.
Part One

Nineteen bills and two joint resolutions are on the daily calendar for second-reading consideration today. The bills and joint resolutions analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 57

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, April 27, 2015
84th Legislature, Number 57
Part 1

SUBJECT: Dedicated fund balances available for budget certification

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 20 ayes — Otto, Sylvester Turner, Ashby, Bell, G. Bonnen, Burkett, Capriglione, S. Davis, Gonzales, Howard, Hughes, Koop, Longoria, McClendon, Muñoz, Phelan, Raney, J. Rodriguez, VanDeaver, Walle

0 nays

7 absent — Dukes, Giddings, Márquez, Miles, R. Miller, Price, Sheffield

WITNESSES: For — Stephen Minick, Texas Association of Business; (*Registered, but did not testify*: Glenn Morrison, City of Killeen)

Against — None

On — (*Registered, but did not testify*: Ursula Parks and Zelma Smith, Legislative Budget Board; Rob Coleman, Texas Comptroller of Public Accounts)

BACKGROUND: General revenue dedicated funds are funds collected for a specific purpose designated in state law. In 1991, during a process called funds consolidation, the Legislature began phasing out restrictions on many dedicated revenue funds and changing the methods of fund accounting. While some funds were abolished, many were not. Each session since 1995, the Legislature has enacted a funds consolidation bill detailing which funds, accounts, and dedications were exempt from being abolished.

Since 1991, unappropriated balances in dedicated accounts have been counted as available to certify general revenue fund appropriations, according to the Legislative Budget Board's February 2015 report on reducing reliance on general revenue dedicated accounts for budget certification. Government Code, sec. 403.095(b), makes dedicated revenue that on August 31, 2015, exceeds appropriated or encumbered amounts available for general government purposes and considers that

dedicated revenue to be available for budget certification.

Texas Constitution, Art. 3, sec. 49a limits state spending to the amount of revenue the comptroller estimates will be available during the two-year budget period. The comptroller must certify that the state will have enough revenue to pay for approved spending. The comptroller estimated in the 2015 biennial revenue estimate that there would be $4.4 billion in general revenue-dedicated account balances available to certify the budget at the end of fiscal 2015, increasing to $4.7 billion by fiscal 2017.

DIGEST:

HB 6 would update references in Government Code, sec. 403.095(b) that govern the use of dedicated revenues to extend its provisions through fiscal 2017 and to make them apply to the 84th Legislature. The section would expire September 1, 2017. As a result, dedicated revenues that on August 31, 2017, were estimated to exceed the amount appropriated by the general appropriations act or other laws enacted by the 84th Legislature would be available for general purposes and would be considered available for budget certification.

The bill would abolish funds and accounts created, recreated, or dedicated by the 84th Legislature on the later of August 31, 2015, or the date of when the act creating or dedicating them took effect. Excluded from abolition would be dedications, funds, and accounts that:

- were enacted before the 84th Legislature convened to comply with requirements of state constitutional or federal law; or
- remained exempt from abolition during funds consolidation in 1991.

Abolition also would not apply to increases in fees or in other dedicated revenue and increases in fees required to be deposited in a fund or account covered by the bill. Federal funds, trust funds, bond funds, and constitutional funds also would be excluded.

The bill would not abolish newly authorized dedications or uses of dedicated funds, dedicated accounts, or dedicated revenue as provided by the 84th Legislature if an act affected a fund, account, or revenue that was exempted from fund consolidation before January 1, 2015.

Dedicated funds, dedicated accounts, and dedicated revenue that were exempt from funds consolidation before January 1, 2015, could be used as provided by an act of the 84th Legislature. Changes in names or uses of previously exempted dedicated funds or accounts would not affect the dedication of the fund or account.

The bill would prevail over any other act of the 84th Legislature that attempted to create a special fund or account or to dedicate revenue. Any exemption from Government Code, sec. 403.095 provisions governing the use of dedicated revenue that was in another act of the 84th Legislature would have no effect. Revenue that would be deposited in a special account or fund under another act of the 84th Legislature would be deposited in the undedicated portion of the general revenue fund unless exempted under HB 6.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

SUPPORTERS SAY:

HB 6 is needed to implement the state's budget and to continue the work of the Legislature in reducing the state's reliance on general revenue dedicated account balances to certify the budget. The bill would define which account balances were rolled into the general revenue fund to count toward the budget certification and which ones were exempted. This is necessary to implement the general appropriations act, which makes appropriations based on the balances of various accounts.

The bill would extend by two years the dates on which certain account balances were rolled into general revenue. This would allow the accounts to remain dedicated while allowing their balances to continue to be considered available for certification. At the end of that time, the issue of counting general revenue dedicated account balances for certification would be revisited and could be adjusted to meet the needs of the 85th Legislature. The bill also would ensure that any funds or accounts created by the 84th Legislature did not run afoul of the state's efforts.

The bill would not establish a cap on the amount of general revenue account balances that could be used for certification because those efforts

are ongoing in CSHB 7 by Darby and the House-passed general appropriations act. Those bills are on track to reaching the goal of reducing reliance on the dedicated account balances used for certification to about $3 billion. In addition, HJR 111 by Darby would address the issue of reducing reliance on general revenue account balances by amending the Constitution to prohibit the comptroller from considering dedicated account or fund balances as available for certification when determining the biennial revenue estimate.

OPPONENTS SAY:

While HB 6 would be a step in the right direction, it could go further in addressing the issue of ending the state's reliance on using general revenue dedicated account balances for budget certification. One option for ensuring reduced reliance on general revenue dedicated accounts for certification would be to establish a cap on the general revenue dedicated balances that the comptroller could count toward budget certification. The 83rd Legislature did this in its fund consolidation bill, and it worked to ensure there was agreement on the maximum amount of balances that would be used for certification. Another option would be to establish a cap on the amount of general revenue dedicated account balances that could be used for certification and then to lower that cap periodically until it reached a level the Legislature found appropriate.

While other efforts, including a proposal to amend the Constitution, are ongoing to ensure that the Legislature reduces its reliance on general revenue dedicated account balances to certify the budget, the inclusion of a cap in HB 6 might be appropriate because other ideas may not come to fruition.

NOTES:

The Senate companion bill, SB 1736 by Hinojosa, was referred to the Senate Finance Committee on March 24.

SUBJECT: Revising provisions governing general revenue dedicated funds

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 20 ayes — Otto, Sylvester Turner, Ashby, Bell, G. Bonnen, Burkett, Capriglione, S. Davis, Gonzales, Howard, Hughes, Koop, Longoria, McClendon, Muñoz, Phelan, J. Rodriguez, Sheffield, VanDeaver, Walle

0 nays

7 absent — Dukes, Giddings, Márquez, Miles, R. Miller, Price, Raney

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; Theodore (Tod) Wickersham, Jr., Public Citizen, Inc.; Judith Bundschuh, Texas Association of Realtors; Stephen Minick, Texas Association of Business; Darrell Pile, Texas EMS, Trauma and Acute Care Foundation; Matthew Davis; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Dean McWilliams, American Society of Landscape Architects - Texas; John Paul Urban, NRG Energy; Billy Phenix, Securities Industry and Financial Markets Association (SIFMA); Randy Lee, Stewart Title Guaranty Company; Steven Garza and Daniel Gonzalez, Texas Association of Realtors; Brittney Booth, Texas Business Law Foundation; Susan Ross, Texas Dental Association; Jorie Klein and Dinah Welsh, Texas EMS, Trauma and Acute Care Foundation; Julie Acevedo, Texas Fire Chiefs Association.; Matt Burgin, Texas Food and Fuel Association; Troy Alexander, Texas Medical Association; Jim Reaves, Texas Nursery and Landscape Association; Bj Avery and Tommy Lucas, Texas Optometric Association; Heather Aguirre, Texas Osteopathic Medical Association; David Lancaster, Texas Society of Architects; Bob Owen, Texas Society of CPAs; Mark Hanna, Texas Society of Professional Surveyors)

Against — None

On — Sandie Haverlah, Environmental Defense Fund; Robin Garza, Harris Health System; Jose E. Camacho, Texas Association of Community Health Centers; (*Registered, but did not testify*: Kelli

Merriweather and Brian Millington, Commission on State Emergency Communications; Ursula Parks and Zelma Smith, Legislative Budget Board; Thomas Gleeson and Brian Lloyd, Public Utility Commission of Texas; Liz Day, Texas Commission on Environmental Quality; Rob Coleman, Texas Comptroller of Public Accounts)

BACKGROUND:

General revenue dedicated funds are funds collected for a specific purpose designated in state law. The comptroller estimated in the 2015 Biennial Revenue Estimate that at the end of fiscal 2015 there would be $4.4 billion in general revenue dedicated account balances available for certification, increasing to $4.7 billion by 2017.

Under Art. 3, sec. 49a of the Constitution, no appropriations bill may be enacted until the comptroller certifies that the state will have enough revenue to cover the approved spending. Under Government Code, sec. 403.095 the comptroller includes in the estimate of funds available for general-purpose spending the amounts in general revenue dedicated accounts expected to exceed appropriations from those accounts at the end of the current biennium.

DIGEST:

CSHB 7 would modify provisions governing general revenue dedicated funds and accounts. The bill would modify fees, eligible uses of funds, procedures, and other provisions.

The bill would take effect September 1, 2015.

B-On-time higher education student loan program. CSHB 7 would end a requirement that a portion of higher education tuition be reserved for the financial assistance program B-On-Time. Public higher education institutions no longer would have to contribute 5 percent of their tuition into the B-On-time student loan account, which provides no-interest loans to qualifying students.

The bill would expand the permissible uses of the funds in the B-On-time loan account, including allowing appropriations from the account to institutions that had previously paid the 5 percent tuition set-aside but only for purposes other than the B-On-time loan program. The bill would require that these appropriations to institutions be made in proportion to

what each institution had paid into the B-On-time account through tuition set-asides.

Physician education loan repayment program. The bill would repeal the requirement that 2 percent of medical school students' tuition be deposited in the physician loan repayment program account. Deposits from a portion of a tobacco products tax that go into the physician education loan repayment account would be suspended if the account was sufficient to fund existing and expected loan repayment commitments. The bill would allow these deposits to go instead to the general revenue account and would require that they be used only for health care purposes.

Trauma fund consolidation. CSHB 7 would abolish the state's regional trauma account and would allow the designated trauma facility and emergency medical services account to accept the deposits that would have gone into the regional trauma account. Any balance remaining in the regional trauma account would be transferred to the designated trauma facility and EMS account.

Oil and gas regulation and cleanup fund. The bill would direct certain oil and gas tax and fee revenues that currently are deposited into the general revenue fund to the oil and gas regulation and cleanup fund, including the pipeline safety and regulatory fee and the $100 application fee for an oil and gas waste disposal well permit.

The bill also would require the entire $150 application fee for an exception to any Railroad Commission oil and gas rule, rather than two-thirds of it, be deposited into the oil and gas regulation and cleanup fund.

The uses of the oil and gas regulation and cleanup fund would be expanded to include the administration of pipeline safety and regulatory programs.

Fee on certain occupational licenses. CSHB 7 would repeal a $200 additional licensing fee imposed annually on the following 16 professions: chiropractors, physicians, dentists, optometrists, psychologists, certified public accountants, architects, engineers, real estate brokers, investment advisers, attorneys, veterinarians, property tax consultants, landscape

architects, interior designers, and land surveyors.

Texas Emissions Reduction Program (TERP) funds. The bill would limit the statewide Texas Emission Reduction Program's 2 percent surcharge being assessed on the sale, lease, rental, storage, or use of all off-road, heavy-duty diesel equipment to apply only in non-attainment areas.

Driver responsibility program surcharges. The bill would reduce the driver responsibility program surcharges for the offenses of driving without a valid license and driving with no insurance if drivers came into compliance with the law within 60 days of their offense. Both surcharges would be reduced by 50 percent, reducing the surcharge to $125 for not having valid insurance and to $50 for driving with an invalid license. These changes would apply to surcharges pending on CSHB 7's effective date, regardless of when the surcharge was assessed.

System benefit fund. CSHB 7 would remove the 15 percent cap on the discount rate for low-income electricity customers for 2016 to spend the system benefit fund's unexpended balance by the fund's expiration date at the end of fiscal 2016.

Public Utility Commission utility assessments. CSHB 7 would rename the Assessment on Public Utilities to be the Utility Gross Receipts Assessment and would require the Public Utility Commission (PUC) to revise assessments so that the aggregate amount of assessments equaled one-sixth of 1 percent of total gross receipts or the total of amounts appropriated to PUC and the Office of Public Utility Counsel, whichever was less. The assessment would be deposited into a utilities gross receipts assessment general revenue dedicated account.

Petroleum storage tank remediation account. Under current law, TCEQ is required to set the fee on delivery of certain petroleum products in an amount not to exceed what is necessary to cover the agency's costs of administering law related to underground and aboveground storage tanks, as indicated by the amount appropriated by the Legislature from the petroleum storage tank remediation account for that purpose. The bill would exclude from the appropriated amount considered by TCEQ in

determining this fee any amount appropriated by the Legislature from the petroleum storage tank remediation account to monitor or remediate releases occurring on or before December 22, 1998.

Changes in eligible uses for certain funds. CSHB 7 would make changes to the eligible uses of several funds.

Sexual assault program fund. The bill would expand the uses of the sexual assault program fund to include programs and services relating to sex and human trafficking and state agencies' sexual assault prevention or victim services programs. The bill would repeal the dedication to the Texas Health Opportunity Pool of sexually oriented business fees in excess of the first $25 million collected each biennium. Instead, all of the sexually-oriented business fees would go toward the sexual assault program fund.

Volunteer fire department assistance fund. Money in the volunteer fire department assistance fund could be used for contributions to the Texas Emergency Services Retirement System. Amounts appropriated for this purpose and up to $11.5 million appropriated to the Texas A&M Forest Service for grants to volunteer fire departments could not be used to determine the fiscal 2016-17 assessment on certain insurers that goes into the volunteer fire department assistance fund.

TCEQ solid waste disposal fee revenue. Solid waste disposal fee revenue could be used for grants to encourage entities located in nonattainment areas or affected counties to convert heavy-duty vehicles used for municipal solid waste collection into vehicles powered by natural gas engines.

Hazardous and solid waste remediation fees account. Money in the hazardous and solid waste remediation fees account from the sale of batteries could be used for environmental remediation of a closed battery-recycling facility in certain cities.

Law enforcement officer standards and education fund account. The uses of the law enforcement officer standards and education fund account would be expanded so that DPS could use appropriations from the account to make grants to local law enforcement agencies for training on incident-

based reporting systems.

Other provisions. *Report on general revenue accounts.* The comptroller would be required to issue a report after each regular Legislative session that itemized each general revenue dedicated account and its estimated balance and revenue that is considered available for budget certification.

Interest accrued on coastal protection, Alamo complex accounts. The bill would add the coastal protection account and the Alamo complex account to the list of those accounts that do not have their interest made available for general purposes and deposited in the general revenue fund.

Vehicle Inspection fees. The bill would amend Health and Safety Code, sec. 382.0622, regarding the Clean Air Act, by providing that $2 from a portion of the initial two-year vehicle inspection fee, in addition to the general inspection fee, be remitted to the state.

Motorcycle license fee. The bill would reduce the motorcycle license fee by $5.

The comptroller would be required to transfer any remaining balance in the motorcycle education account to the general revenue fund within 90 days of the start of fiscal 2016.

Specialty license plates. CSHB 7 would extend the date from September 30, 2013, to September 30, 2015, for the comptroller to eliminate all dedicated accounts established for specialty license plates and to set aside the balances of those accounts for appropriations only for their intended purposes. The bill also would extend the date for the establishment of a trust fund outside of the general revenue fund to handle the fee that previously went into the dedicated accounts from September 1, 2013, to September 1, 2015.

Educator excellence innovation fund. The educator excellence innovation fund would be abolished and its balance transferred to the general revenue fund by the 90th day of fiscal 2016.

SUPPORTERS

CSHB 7 would take key steps toward reducing reliance on general

SAY: revenue dedicated funds and increasing budget transparency. Many of these changes come either directly or indirectly from recommendations in the February 2015 report by the Legislative Budget Board (LBB) on how to reduce reliance on general revenue dedicated accounts used to certify the budget. While the Legislature has not spent dedicated funds for unintended purposes, it has been using these for certification purposes for decades. This practice is so ingrained that it will take multiple sessions for the state to stop relying on the practice completely.

CSHB 7, along with CSHB 1 and HB 6 by Otto (also on today's calendar), would take important steps toward reducing the state's reliance on unspent general revenue dedicated funds. Eliminating and reducing general revenue dedicated balances through fee cuts, refunds, appropriations, and other measures simply will take time. This bill would not appropriate any funds but would make many account-specific changes needed to move the state closer to budget transparency. CSHB 7 would reduce the amount of general revenue dedicated funds available for budget certification by $563.9 million, according to the LBB. Taken together with other fiscal bills, it would move the state toward a goal of reducing the general revenue dedicated fund balances available for certification by about $1.7 billion.

B-On-time higher education student loan program. Millions of dollars in tuition set-asides sit unused in the B-On-time student loan account, and few schools are able to recapture and make use of what they paid in, often becoming "donor" schools for other institutions that do make use of the program. CSHB 7 would enable the funds from the B-On-time student loan account to be equitably appropriated to schools in the proportion they paid in, ensuring funds collected at one institution were used at the same institution and for whatever tailored priorities they view as best for their students.

CSHB 7 would be essential for the implementation of CSHB 700 by Giddings, approved by the House on April 23, which would abolish the B-On-time loan program, funding renewals only for the next five years and then redistributing the remaining loan account funds to institutions that had paid into the account. This would allow students currently receiving the funds to continue to get the aid on which they have come to rely but

also would eventually distribute the remainder of the account once this cohort of students graduated.

Physician education loan repayment program. CSHB 7 would eliminate or suspend collection of certain funds for the physician education loan repayment program because revenue deposited in the account is in excess of appropriations, and the account has accumulated a large balance. Eliminating the tuition set-aside for the account would increase transparency by helping keep tuition paid by students at the institutions where those students gain their medical education instead of redistributing it to others. The bill would ensure that other deposits in the account would not be suspended unless the fund had enough to continue to fulfill existing and expected physician loan repay commitments for the upcoming biennium.

Trauma fund consolidation. CSHB 7 would consolidate two of the state's trauma accounts for easier administration by abolishing the regional trauma account and moving its funds to the designated trauma facility and EMS account. No funds have been appropriated from the regional trauma account since 2009, and it has accumulated a large balance. Consolidating the accounts would allow the Legislature to have a better picture of the funds available for trauma care and would help provide funding for trauma care that is included in CSHB 1.

Oil and gas regulation and cleanup fund. The oil and gas regulation and cleanup fund is the main funding source for the Railroad Commission. CSHB 7 would direct several fees to the oil and gas regulation and cleanup fund that currently are deposited into the general revenue fund, ensuring that fees assessed on specific industries go back to the main funding source for the agency that is regulating them.

Fee on certain occupational licenses. CSHB 7 would repeal a $200 additional licensing fee, essentially an occupations tax, that is imposed annually on 16 professions, covering about 400,000 licensed professionals. At the time the fees were enacted, the state faced a revenue shortfall. Many of these fees were categorized as temporary and assessed because the selected professions were not subject to the franchise tax in place at the time. When the franchise tax methodology was changed in

2006, these professions were included. Despite the affected professions inclusion in Texas' current franchise tax, the $200 occupations fee remains in effect.

This $200 fee is a hidden double tax that selectively targets certain professional service industries and is levied in addition to the licensing fees these Texans already pay. Most licensed professionals have their own small businesses. By eliminating the $200 annual fee, CSHB 7 would save Texas professionals about $250 million over the next biennium, allowing them to reinvest in their own businesses as well as back into the local economy instead of padding the state coffers.

Texas Emissions Reduction Program funds. The 2 percent surcharge being assessed on the sale, lease, or rental of diesel equipment has been artificially raising the cost of construction in the state. CSHB 7 would limit the TERP surcharge only to nonattainment counties, the only areas of the state eligible for TERP grants. This would help level off the cost of construction and would slow down the accrual of money into the TERP fund, which has a balance of about $1 billion.

Drivers responsibility program surcharges. CSHB 7 would create an incentive to follow Texas driving laws by reducing certain surcharges assessed in the Drivers Responsibility Program if a driver came into compliance with the law. The bill would apply narrowly to driving without a valid license and driving without insurance and would promote changes in behavior that would make the roads safer for all.

System benefit fund. Removing the 15 percent cap on the discount rate for low-income utility customers for 2016 would allow the money to be used for the purpose for which it was intended and would allow the program to end as scheduled at the end of fiscal 2016.

The system benefit fund (SBF) is administered by the Public Utility Commission to fund the operation of the agency, pay for customer education programs, and provide a utility rate discount to eligible low-income utility customers during the warm-weather months of May through September. The SBF receives its revenue through a per-megawatt-hour fee collected from electricity ratepayers in areas open to

competition. During recent years, revenue collected for the SBF has exceeded appropriations, and the fund ended fiscal 2013 with a balance of $811.3 million.

The 83rd Legislature eliminated the fee deposited to the system benefit fund beginning in fiscal 2014 and set the fund's expiration date for end of fiscal 2016. However, due to lower-than-expected enrollment in the discount program, combined with a mild summer, the Public Utility Commission estimates that the SBF will have an unexpended balance of $227 million at the end of fiscal 2016.

Public Utility Commission utility assessments. The Public Utility Commission currently is funded by both general revenue and a portion of the system benefit fund allocated for administration of the agency. Because the system benefit fund is set to expire, a long-term strategy is needed to move the PUC off of system benefit fund dollars and onto a predictable revenue stream that could sustain the important functions of the PUC as a utility regulator. CSHB 7 would use an existing tax on utilities and would allow the PUC to set a lower fee than what is currently in statute to fund the PUC and Office of Public Utility Counsel operations.

Petroleum storage tank remediation account. CSHB 7 would reduce the petroleum product delivery fee to align the revenue deposited to the petroleum storage tank remediation account with the balance in the account needed to fund the ongoing programs. This would ensure the account balance, estimated to be about $155 million by the end of fiscal 2015, was used to fund clean-up and monitoring costs related to spills at petroleum-contaminated sites that were reported to TCEQ on or before December 1998. This also would result in a reduction of $21.6 million in general revenue dedicated funds counted toward certification during the 2016-17 biennium and could reduce the balance in the account to $82.7 million by the end of fiscal year 2021.

Changes in eligible uses for certain funds. CSHB 7 would make changes to the eligible uses of some funds. Increasing the range of eligible uses of general revenue dedicated funds to include other state priorities that are related to the funds' original purpose would provide more flexibility for the Legislature to meet the needs of the state. State priorities

change over time, and funding priorities must be flexible enough to change with them. Adding related funding priorities to uses of general revenue dedicated funds would provide this flexibility without being untrue to the original purpose to which the Legislature dedicated the funds. For instance, the addition of pipeline safety and regulatory programs to the eligible uses of the oil and gas regulation and cleanup fund clearly is related to the purpose of the account.

Other provisions. *Report on general revenue accounts.* CSHB 7 would codify a current practice by requiring the comptroller to report on general revenue accounts and their balances and revenues available for certification. This would ensure the Legislature had robust information for writing the state budget.

Interest accrued on coastal protection, Alamo complex accounts. The bill would continue the process of properly classifying accounts by specifically exempting two accounts administered by the General Land Office from the requirement that their interest be reallocated to the general revenue account.

Vehicle Inspection fees. Although statute appears to limit the allocation of vehicle inspection certificate fees to the clean air account to $2 of the general inspection fee and $2 of the initial two-year vehicle inspection fee, $4 of the two-year vehicle inspection certificate fee is deposited to the clean air account. CSHB 7 would amend statute to clarify that $2, rather than $4, of the amount remitted to the state from two-year inspections of new vehicles is allocated to the clean air account.

Motorcycle license fee. Reducing the motorcycle license fee by $5 would collect about $2.8 million less in fee revenue over the next biennium. The motorcycle license fee funds the motorcycle education fund, which has a current balance of about $17.8 million and has been untapped for its purpose of paying for training and safety programs at TxDOT and DPS. While these are worthwhile programs, they have not been funded appropriately. The motorcycle education fund should not continue to accrue money if it is not used for its intended purpose.

Specialty license plates. CSHB 7 would extend the date on the state's plan

to improve the disbursement of specialty license plate funds so that efforts can continue to ensure that the money raised from the plates goes toward its intended purpose.

Educator excellence innovation fund. The educator excellence innovation fund would be abolished because the educator excellence innovation program has been funded through general revenue appropriated to the Texas Education Agency.

OPPONENTS SAY:

B-On time higher education student loan program. CSHB 7 would endanger a financial aid program that has never been given a real chance to succeed, allowing funds to be drained from the program's account for purposes other than the program. The program serves an important population of students and has shown promising outcomes through incentivizing timely and academically distinguished graduation. Concerns about the program could be remedied easily and are not an indication of whether the concept itself is good. For example, the Higher Education Coordinating Board could be allowed to redistribute funds differently, or the program could serve a more targeted population.

Physician education loan repayment program. The Legislature should be looking for ways to expand the physician education loan repayment program rather than to eliminate or suspend funding into the account that supports it. The state has an ongoing need to attract medical school students to serve in geographic and medical fields of critical need, and the program can help address those needs.

Fee on certain occupational licenses. The bill would result in a nearly $250 million loss of general revenue related funds through the next biennium. From each $200 fee collected, $50 is deposited to the foundation school fund and the remaining $150 is deposited to the general revenue fund. From the fee for real estate brokers, $100 is deposited to the general revenue fund, $50 to the foundation school fund, and $50 to the Texas A&M Real Estate Center.

Given that significant tax cuts already are on the table this legislative session, it would be inappropriate to make further reductions when there are many underfunded priorities, including public education, that would

suffer from the loss of revenue.

TERP funds. Limiting the statewide TERP 2 percent surcharge on diesel equipment to just the nonattainment and affected counties could cause confusion and an administrative burden. While TERP is geared toward nonattainment and other affected counties, there is a statewide benefit to the program. A large portion of TERP funds are used to replace or upgrade diesel equipment in nonattainment areas to reduce air emissions. Cleaner diesel equipment is a benefit to the whole state because it travels to other counties. Further, as the state faces more stringent federal air quality standards, more and more counties likely will come into nonattainment status.

Changes in eligible use for certain funds. CSHB 7 would modify the purposes for which some key funds could be spent. Expanding the permissible purposes for which funds could be spent could be problematic if there are significant unmet needs associated with the original purpose. For example, allowing solid waste disposal fee revenue to be used for grants to convert solid waste collection vehicles into vehicles powered by natural gas engines would benefit air quality issues in non-attainment areas. While a worthy purpose, the funds would be diverted from their original purpose of solid waste management and remediation. The Legislature should satisfy existing pressing needs before expanding eligible uses of funds.

OTHER OPPONENTS SAY:

While CSHB 7 would take some steps in the right direction, it might not go far enough. Under-appropriating from general revenue dedicated funds to preserve enough unspent revenue to certify the budget means that the state is raising revenue for one purpose and diverting the funds to another. Honesty and transparency in budgeting call for spending funds on the purpose for which they were collected. If the state is not willing to spend the account balances, then it should be willing to refund the money to taxpayers.

NOTES:

According to the fiscal note, CSHB 7 would result in a negative net impact to general revenue related funds of $150.4 million through fiscal 2016-17.

The companion bill, SB 1276 by Nelson, was referred to the Senate Finance Committee on March 18.

SUBJECT: Prohibiting using dedicated revenues for budget certification

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 19 ayes — Otto, Ashby, Bell, Capriglione, S. Davis, Giddings, Gonzales, Howard, Hughes, Koop, Márquez, McClendon, R. Miller, Phelan, Raney, J. Rodriguez, Sheffield, VanDeaver, Walle

0 nays

8 absent — Sylvester Turner, G. Bonnen, Burkett, Dukes, Longoria, Miles, Muñoz, Price

WITNESSES: For — Stephen Minick, Texas Association of Business; (*Registered, but did not testify*: Vic Suhm, Tarrant Regional Transportation Coalition; Justin Lewis)

Against — None

BACKGROUND: Under Texas Constitution, Art. 3, sec. 49a, no appropriations bill may be enacted until the comptroller certifies that the state will have enough revenue to cover the approved spending. The comptroller also is required before a regular session of the Legislature to estimate the anticipated revenue available for the upcoming biennium. This is called the biennial revenue estimate.

General revenue dedicated funds are revenues collected for a specific purpose designated in state law. Since 1991, unappropriated balances in these accounts have been counted as available to certify general revenue fund appropriations, according to the Legislative Budget Board's February 2015 report on reducing reliance on general revenue dedicated accounts for budget certification.

DIGEST: CSHJR 111 would amend the Texas Constitution to prohibit the use of revenue, other money, or account or fund balances that were dedicated to a particular purpose to certify spending and to estimate available revenue in the biennial revenue estimate.

Use of dedicated revenue to certify spending. The comptroller would be prohibited from considering any dedicated revenue, other money, or any account or fund balance as being certified available for an appropriation that was not for a purpose or entity to which the money was dedicated. The Legislature would be prohibited from enacting laws making an unappropriated balance of dedicated accounts or funds available for general government purposes or to be used to certify spending except by repealing a dedication.

These provisions would take effect January 1, 2023, and would apply only to a certification of an appropriation for all or part of a state fiscal year beginning after September 1, 2023.

Use of dedicated revenue for biennial revenue estimate. When making the biennial revenue estimate before each legislative session, the comptroller could not consider any portion of any dedicated revenue, other money, or account or fund balance as being available for an appropriation that was not for a purpose or entity to which the money was dedicated.

This provision would take effect January 1, 2016, and would apply to biennial revenue estimates made for all or part of fiscal 2017 or after.

Restriction on spending dedicated revenue. Dedicated revenue or other money received by the state from a particular source or held or deposited in an identified account or fund inside or outside of the treasury could not be appropriated or expended for any purpose or to any entity other than that to which it was dedicated, unless the Legislature repealed the dedication.

This provision would take effect September 1, 2023, and would apply only to appropriations authorized for all or part of a state fiscal year beginning after that date.

The ballot proposal would be presented to voters at an election on November 3, 2015. It would read: “The constitutional amendment to end fee and other revenue diversions by prohibiting using certain money dedicated by law for nondedicated purposes or entities and to prohibit

using that money to certify appropriations for nondedicated purposes or entities."

SUPPORTERS SAY:

CSHJR 111 would increase transparency and accountability in the state's budgeting process. The proposed amendment would move Texas closer to these principles by ensuring that money collected for dedicated purposes was not counted as being available for general purpose spending and that funds collected by the state would be used only for the purposes for which they were collected.

Revenues dedicated for a specific purpose should not be counted as available for general purpose spending, something the state has been doing since 1991. This is a smoke-and-mirrors technique that artificially increases the amount of general revenue available for certification, even though the balances in dedicated accounts do not reflect truly available funds. The practice distorts the financial picture of the state and has resulted in Texas holding large balances in some accounts instead of spending the money on the purposes for which it was collected.

While the Legislature recently began to address this issue by reducing the amount of dedicated account balances used to certify the budget, CSHJR 111 would ensure that the reductions continue. For fiscal 2014-15, about $4.2 billion in dedicated account balances were counted as available for certification, a decrease of $778 million from the previous biennium, according to the Legislative Budget Board. While the fiscal 2016-17 budget is on track to reduce reliance on dedicated account balances to about $3 billion, this is still too high.

The proposed resolution would ensure that the state continued to wean itself from this practice by prohibiting the counting of dedicated revenue to certify the budget or to make the biennial revenue estimate. It would effect this change in a responsible manner by making the provisions take full effect over time, with complete implementation in 2023. This would give the state several budget cycles to continue to reduce its reliance on dedicated account balances to certify the budget.

Prohibiting the use of dedicated account balances as a budgeting tool would give lawmakers an incentive to keep enough money in the accounts

to fund the services and programs for which they were assessed. Excessive balances could be eliminated and fees and taxes could be adjusted to pay only for the dedicated purposes. The state could make a decision to either use the balances or to give the funds back to taxpayers.

The resolution would support truth in budgeting by limiting the process for repurposing dedicated funds or accounts. The proposed amendment would prohibit the Legislature from using dedicated funds for general purpose spending or to certify the budget unless the dedication of the funds was formally repealed by legislation. It also would require the Legislature to repeal a dedication if it were to appropriate dedicated funds for any purpose other than that to which they were dedicated. Putting these requirements into the Constitution would solidify the state's policy and ensure that any changes in this policy were done transparently and publicly.

While reducing reliance on general revenue dedicated account fund balances could continue without a constitutional amendment, the practice is so ingrained that an amendment is necessary to guarantee the reductions continue and that the practice is not revived. The resolution would ensure that legislators had the discipline to budget honestly and reassure taxpayers that money was being handled in a transparent way.

OPPONENTS SAY:

While reducing the state's reliance on using dedicated fund balances to certify the budget might be a good idea with broad support, using the Constitution to prohibit the practice is unnecessary and could be too restrictive on state budgeting practices.

Just like other budgeting tools, such as delaying a school funding payment until the next fiscal year, using dedicated account balances to certify appropriations or to make the biennial revenue estimate might sometimes be necessary. For example, in a severe economic downturn, this practice might be used to help temper severe cuts to essential state programs and services or tax increases. Constitutionally prohibiting this practice could limit lawmakers' flexibility in crafting state budgets.

The Legislature is committed to continuing to reduce its reliance on using dedicated account balances, and a constitutional amendment would not be

necessary to continue this practice. The amount in dedicated revenues used for budget certification was reduced significantly from fiscal 2012-13 to fiscal 2014-15 and is being reduced again for fiscal 2016-17. It would be best to let this process continue without a constitutional deadline and a prohibition that would be time-consuming and difficult to lift, if needed.

OTHER OPPONENTS SAY:

Reducing reliance of general revenue dedicated funds is a good idea that should be fully implemented sooner than 2023. The Legislature has demonstrated in the past few rounds of budget writing that it can take significant steps in one biennium to reduce reliance on general revenue dedicated accounts. This practice should be continued and accelerated to bring that reliance to an end as soon as possible.

NOTES:

SJR 33 by Watson, the companion to CSHJR 111, was referred to the Senate Finance Committee on February 24.

The Legislative Budget Board estimates that the cost of publishing the proposed resolution would be $118,681.

SUBJECT: Providing tax incentives for university technology commercialization

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 6 ayes — Elkins, Walle, Galindo, Gonzales, Leach, Scott Turner

0 nays

1 absent — Gutierrez

WITNESSES: For — None

Against — (*Registered, but did not testify*: Conrad John, Travis County Commissioners Court; Teresa Beckmeyer; Marla Flint)

DIGEST: CSHJR 64 would amend the Texas Constitution to add Art. 8, sec. 1-p, which would enable the Legislature, by general law, to exempt from taxation certain property of university research technology corporations.

The proposed resolution would define "university research technology corporation" as a special-purpose corporation created to develop and commercialize technologies wholly or partly owned by a Texas higher education institution or a nonprofit medical center development corporation with members that were Texas higher education institutions.

Real property owned or leased by a university research technology corporation, or owned by a nonprofit medical development center corporation and leased to or used by the university research technology corporation, could receive the tax exemption according to eligibility requirements imposed by the Legislature.

The ballot proposal would be presented to voters at an election on November 3, 2015. It would read: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of certain property owned by or leased to or by a university research technology corporation."

SUPPORTERS SAY:

CSHJR 64, in conjunction with its enabling legislation, CSHB 590 by Elkins, would create a more favorable tax environment in which to encourage the development and commercialization of technology by Texas institutions of higher education. Although Texas generally has a regulatory climate favorable to business, many startups that make use of university patents have moved out of state to seek more advantageous tax treatment of their investments. The proposed amendment would allow the Legislature to address this drain of university intellectual property by offering incentives for startups partnering with universities.

Together with CSHB 590, CSHJR 64 would help support economic development by putting university or medical research to commercial use without any cash outlays from the state. This incentive program could help faculty recruitment by creating a potentially lucrative outlet for their research.

The incentives afforded by the joint resolution would not lead university administrations to emphasize commercial research because universities already are aware of the need to find commercial uses for the patents and technologies they develop. This proposed amendment and its enabling legislation merely would channel those efforts in the most productive way for Texas.

Although tax revenue might decline somewhat at first, the tax breaks enabled by the joint resolution could pay for themselves because of the ancillary businesses that would emerge as a result of the commercialized research and technology.

OPPONENTS SAY:

CSHJR 64 would enable legislation that could reduce revenue available to local governments and school districts. The Legislature should be mindful of the joint resolution's potential impact on these local taxing entities, particularly school districts that would be held harmless for such losses at state expense.

University income from patents does not cover the costs of running centers for technology development and transfer. Before encouraging further commercialization of university research, the Legislature should develop metrics to better understand the benefits commercialization may

offer for universities and students.

CSHJR 64 inappropriately would create tax breaks to support university research. Many Texans have concerns about certain types of research conducted at some universities, and such research should not be encouraged by tax exemptions provided by the state.

NOTES:

The Legislative Budget Board estimates that the resolution would have no fiscal implication to the state other than the $118,681 publication cost. Any other costs would be a result of the joint resolution's enabling legislation.

CSHB 590 by Elkins, also on today's calendar, is the enabling legislation for the tax exemptions that would be authorized by voter approval of CSHJR 64.

SUBJECT: Management and oversight of state contracts

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 6 ayes — Elkins, Galindo, Gonzales, Gutierrez, Leach, Scott Turner

0 nays

1 absent — Walle

WITNESSES: For — (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch)

Against — None

On — (*Registered, but did not testify*: Todd Kimbriel, Department of Information Resources; Julie Ivie and Ursula Parks, Legislative Budget Board; Kelly Linder, Cesar Saldivar, and John Young, State Auditor's Office)

BACKGROUND: Government Code, ch. 2262 governs statewide contract management. Sec. 2262.101 establishes a Contract Advisory Team to review and make recommendations involving contracts valued at $10 million or more. The team is overseen by the Texas comptroller and includes members from the Health and Human Services Commission, the comptroller's office, the Department of Information Resources (DIR), the Texas Facilities Commission, the governor's office, and a state agency with fewer than 100 employees.

Government Code, ch. 2157 governs purchasing of automated information systems. Sec. 2157.068 defines a "commodity item" as commercial software, hardware, or technology services other than telecommunication services that are generally available to businesses or the public and for which a reasonable demand exists in two or more state agencies. With certain exceptions, state agencies are required to purchase IT commodity items through the Cooperative Contracts program at DIR. Under the

program, DIR establishes "master contracts" awarded through an open and competitive procurement process. Agencies may negotiate further discounts directly with a program vendor or purchase directly from vendors. Agencies are not required to report procurements made through the program to DIR.

DIGEST:

CSHB 15 would abolish the Contract Advisory Team at the comptroller's office and establish a Contract Management and Oversight Team at the Legislative Budget Board (LBB). The team would coordinate and consult with the existing quality assurance team formed by the state auditor, LBB, and Department of Information Resources (DIR) on all high-risk contracts relating to a major information resources project. The contract management team also would:

- develop criteria for identifying high-risk factors in contracts;
- consult with state agencies and approve high-risk contracts, including Texas Department of Transportation contracts that did not relate to highway construction or highway engineering or were not subject to contract claims; and
- provide recommendations and assistance to state agency personnel throughout the contract management process.

High-risk contracts. The bill would define a "high-risk contract" as a state agency contract or purchase order that had:

- a value of at least $10 million;
- a value of less than $10 million but had high-risk factors identified by the quality assurance team; or
- was entered into with an entity incorporated outside of the United States.

A contract also would be considered high risk if it was entered into with an entity that, during the preceding five-year period, had had a contract with a state agency or federal governmental entity terminated or canceled for:

- a violation of, or noncompliance with, the terms of the contract;

- delivery of an ineffective product, service, or system;
- significant delays or cost overruns; or
- fraud, misconduct, or other cancellation for cause.

The quality assurance team could establish other criteria that made a contract or purchase order high-risk, including that it:

- was awarded by an agency with significant audit findings related to contracting in the previous two fiscal years;
- was expected to cost more than 20 percent of the awarding agency's budget;
- outsourced a program or key function; or
- had change orders that altered the cost or duration of a contract by more than 20 percent.

State agencies would be required to provide written notice to the contract oversight team at least 30 days before publicly releasing solicitation documents for a high-risk contact. Each agency would have to receive a separate prior approval from the team before spending money under an executed high-risk contract and to make a payment or series of payments that exceeded half of the high-risk contract value.

The Contract Management and Oversight Team could review documentation to ensure that potential risks had been identified and mitigated. If the potential risks could not sufficiently be mitigated, the team would be required to disapprove the payment.

After review and comment by the LBB, the Contract Management and Oversight Team could recommend that a state agency cancel a proposed contract that would place the state at an unacceptable risk if executed or an executed contract that was experiencing performance failure or payment irregularities. If a state agency did not implement such a recommendation, the team would be required to notify the comptroller. After notification, the comptroller would not authorize the expenditure of funds for the contract.

The bill would transfer the authority of the Contract Advisory Team to the

Contract Management and Oversight Team.

Information technology contracts. The bill would prohibit a state agency from entering into a contract to purchase certain information technology commodities if the value of the contract exceeded $1 million. A state agency that entered into a contract for a commodity item would have to obtain at least three competitive offers from vendors selected by the DIR if at least three such vendors offered the item.

The bill would add new requirements for contracts awarded under the Cooperative Contracts program with a value of more than $50,000 that involved a statement of work. The bill would define "statement of work" as a document stating the requirements for a contract that were specific to the vendor under the contract, including deliverables, performance specifications, and other requirements that were not specified in a contract awarded by DIR. A state agency would be required to consult with DIR before submitting a statement of work to a vendor and post each statement of work on the agency's website. Money could not be paid to a vendor unless DIR first signed the statement of work.

The bill would increase from $14,000 to $50,000 the minimum threshold amount for written notice to LBB of certain construction, professional services, and consulting services contracts.

The bill would take effect September 1, 2015. Its requirements related to high-risk contracts and information technology commodities would apply only in relation to a contract for which a state agency first advertised or solicited bids, proposals, offers, or qualifications on or after that date; contracts that were extended or modified on or after that date; or contracts for which a change order was submitted on or after that date.

SUPPORTERS SAY:

CSHB 15 would address recent reports of abuse in certain state government contracting processes by providing increased management and oversight of high-risk contracts. The bill would replace the multiagency Contract Advisory Team at the comptroller's office with a Contract Management and Oversight Team at the Legislative Budget Board (LBB). The LBB team would have expanded authority to review high-value contracts as well as smaller contracts that could be at risk for

abuse. It could act quickly to cancel a potentially risky contract or stop payments on an existing contract that became problematic.

The bill also would tighten state agencies' use of the Cooperative Contracts program at DIR for technology purchases. The State Auditor's Office on April 2 issued an investigative report on the procurement of services and commodities from a data analytics company by the Health and Human Services Commission and the Office of Inspector General. Among the report's findings was that the commission and office improperly procured fraud detection system development services that were not authorized through DIR's cooperative contract with the company.

The bill would adopt several of the audit report's recommendations, including requiring state agencies to obtain three bids for purchases through the Cooperative Contracts program. This could prevent a state agency from picking a favored vendor over another that offered a better value. The bill also would limit an agency from using the program for contracts exceeding $1 million. This could force agencies to use a more transparent and accountable bidding process for larger contracts.

The requirement for DIR oversight of certain purchases from vendors on the master contracts list would provide a needed layer of oversight and help ensure that agencies were purchasing only goods and services authorized under vendors' cooperative contracts.

OPPONENTS SAY:

CSHB 15 could introduce added uncertainty and risk into the already unequal contractual relationship between the state and private vendors. The state of Texas, despite some popular perceptions, enjoys significant leverage over vendors who provide goods and services. Private companies that contract with the state must agree to statutorily mandated contract provisions and risk having a contract canceled due to lack of appropriations. They also waive or limit normal contractual rights due to the state's sovereign immunity. This bill unfairly could erode vendors' position even further.

The bill would allow a team within a legislative branch agency to determine if solicitations and "high-risk" contracts by executive branch

agencies should be canceled. This could violate the division of powers in the Texas Constitution. Assigning contract management authority to a third party entity that was not statutorily responsible for administering state programs also could undermine executive branch agency accountability.

Changes to DIR's Cooperative Contracts program could increase the time — and possibly the costs — for state agencies needing to purchase information technology. Forcing agency employees to spend additional time on administrative processes could distract from the focus on the agency's mission priorities. The program changes also could lead to a possible reduction in competition from the vendor community as a result of increased cost of sales.

Clarification is needed to ensure that an agency procurement could move forward if an agency solicited, but did not receive, responses from at least three vendors.

NOTES:

The fiscal note estimates a cost of $2.6 million for fiscal 2016-17 to pay for additional contract review staff.

SUBJECT: Health insurance coverage for abuse-deterrent opioid analgesic drugs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Chase Bearden, Coalition of Texans with Disabilities; Robert Popovian, Pfizer; (*Registered, but did not testify*: Cynthia Humphrey, Association of Substance Abuse Programs; Robin Peyson, Communities for Recovery; Will Francis and Colleen McKinney, National Association of Social Workers - Texas Chapter; Mark Vane, Teva Pharmaceuticals; Marshall Kenderdine, Texas Academy of Family Physicians; Joshua Houston, Texas Impact; Patricia Kolodzey, Texas Medical Association; Krista Crockett, Texas Pain Society; Mark Kinzly, Texas Overdose Naloxone Initiative; Lon Craft, TMPA; Melody Chatelle, United Ways of Texas; Kimberly Allen)

Against — (*Registered, but did not testify*: David Root, Prime Therapeutics; Bill Hammond, Texas Association of Business)

On — Chris Herrick, Texas Department of Insurance

BACKGROUND: Analgesic drugs are those that relieve pain. Opioids are a class of pain-relieving drugs that include medications such as hydrocodone, oxycodone, morphine, and codeine.

The U.S. Food and Drug Administration (FDA) describes "abuse-deterrent properties" as those properties shown to meaningfully deter abuse, even if they do not fully prevent abuse. The FDA defines the term "abuse" as the intentional, non-therapeutic use of a drug product or substance, even once, to achieve a desirable psychological or physiological effect.

DIGEST: CSHB 2505 would require certain health insurance plans to provide

coverage for abuse-deterrent opioid analgesic drugs. The bill would provide definitions for these drugs and would allow a health insurance plan to require prior authorization for an abuse-deterrent opioid analgesic drug under certain circumstances.

Definitions. The bill would define an "abuse-deterrent opioid analgesic drug" to mean an opioid analgesic drug for which the FDA had approved abuse-deterrent labelling that indicated the drug was expected to result in a meaningful reduction in abuse. An "opioid analgesic drug" would mean a drug in the opioid analgesic drug class that was prescribed to treat moderate to severe pain or other conditions and could be in an immediate or extended-release form of the drug, in a single-component drug form or in combination with another drug.

Prior authorization. The bill would allow a health insurance plan to require prior authorization for an abuse-deterrent opioid analgesic drug if the plan also required prior authorization for versions of the drug that did not have abuse-deterrent properties. A health insurance plan could not require a plan enrollee to first use an opioid analgesic drug without abuse-deterrent properties before giving prior authorization for the abuse-deterrent version of the drug.

Affected health insurance plans. The bill would apply only to a health benefit plan, including a small employer health benefit plan subject to the Health Insurance Portability and Availability Act in Insurance Code, ch. 1501, that provided certain benefits. The bill also would apply to a consumer choice of benefits plan issued under Insurance Code, ch. 1507.

The bill would provide exceptions to the requirement that insurance plans provide coverage for abuse-deterrent opioid analgesic drugs. The requirement would not apply to Medicaid, Medicaid managed care, the Children's Health Insurance Program, certain Medicare supplemental policies, workers' compensation policies, medical payment insurance coverage provided under a motor vehicle insurance policy, or certain long-term insurance policies.

The bill also would not apply to a health benefit plan that provides coverage only:

- for a specified disease, other than cancer, or for another limited benefit;
- for accidental death or dismemberment;
- for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;
- as a supplement to a liability insurance policy;
- for credit insurance;
- for dental or vision care; or
- for indemnity for hospital confinement.

Qualified health plans under the Affordable Care Act. The bill would not require a qualified health plan, as defined by the federal Affordable Care Act (ACA), to provide a benefit for abuse-deterrent opioid analgesic drugs if providing that benefit would exceed the ACA-specified essential health benefits and if the state would have to make a payment as required by the ACA.

Dispensing. A health benefit plan issuer would be prohibited from reducing or limiting payment to a professional or otherwise penalizing the professional for prescribing or dispensing an abuse-deterrent opioid analgesic drug. CSHB 2505 would specify that the bill would not authorize a health care professional to dispense a drug.

Effective date. The bill would take effect September 1, 2015, and would apply only to a health benefit plan that was delivered, issued for delivery, or renewed starting January 1, 2016.

SUPPORTERS SAY:

CSHB 2505 would reduce the abuse of prescription opioids, which are a legitimate class of drug that aids in pain management. These drugs are easily abused by individuals other than the person for whom they were prescribed and are subject to tampering.

Opioid abuse has expensive consequences for patients, society, and health providers, resulting in billions of dollars in additional annual medical costs due to incarceration and emergency room visits. The cost of the abuse-deterrent form of the drug is low compared to to the high cost of opioid abuse for the state overall.

Requiring certain health insurance providers to cover abuse-deterrent forms of these drugs would help prevent abuse of the drugs and would reduce the associated costs. The bill also would help prevent types of abuse that are more often associated with severe health consequences, including overdose from chewing, snorting, smoking, or injecting these drugs. Abuse-deterrent formulations may not be the single solution to the state's problem with prescription drug abuse, but they should be part of a comprehensive approach to addressing opioid abuse.

Generic alternatives do not yet exist for abuse-deterrent formulations of opioids because this is a new technology, but generic alternatives likely will be submitted for approval to the FDA in the coming months.

Abuse-deterrent formulations of opioids have the same efficacy as regular opioids, but they are intended to prevent abuse by making the drug hard to crush, by making it difficult to liquefy and inject, or by preventing the drug from providing the user with a euphoric effect. One study showed deterrent drugs have demonstrated over time that they show a meaningful reduction in abuse and that they sustain that reduction.

CSHB 2505 simply would enable patients to access to these formulations without unnecessary barriers. It would not require physicians to prefer these drugs or to prescribe them. The bill merely would allow doctors, as they saw fit, to prescribe to their patients an insurance-covered medication that is abuse deterrent.

OPPONENTS SAY:

CSHB 2505, by mandating that health insurance plans cover abuse-deterrent opioid drugs, would increase costs both to health insurance plans and to patients who need these drugs for a legitimate health condition.

Abuse-deterrent opioid drugs have the same efficacy as regular opioids, but they can cost hundreds of dollars more. This increase in cost could be a burden to patients who are using regular opioids properly. The abuse-deterrent formulations covered by the bill also currently do not have generic alternatives, making them particularly expensive for patients and insurance companies.

While abuse-deterrent drugs are harder to crush and inject, they have the

same pain relieving properties as regular opioids and still could be abused, even if certain formulations did not provide a euphoric effect. These drugs can still be abused by swallowing.

The bill is not necessary for physicians to have the option to prescribe these drugs. The abuse-deterrent formulations of opioids have been on the market and approved by the FDA for several years, but manufacturers have failed to convince health insurance plans to cover the drugs and have failed to convince physicians to prescribe them. CSHB 2505 would improperly help manufacturers build demand for these expensive drugs that they were unable to create through market forces.

NOTES:

The Senate companion bill, SB 1094 by Creighton, was considered in a public hearing of the Senate Business and Commerce Committee on April 16 and left pending.

SUBJECT: Conflicts of interest involving local government officers and vendors

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 4 ayes — Kuempel, Collier, S. Davis, C. Turner

0 nays

3 absent — Hunter, Larson, Moody

WITNESSES: For — Ross Fischer; (*Registered, but did not testify*: Peggy Venable, Americans for Prosperity-Texas; Joanne Richards, Anti-Corruption Campaign; Liz Wally, Clean Elections Texas; Jesse Romero, Common Cause Texas; Jack Gullahorn, Professional Advocacy Association of Texas; Tom "Smitty" Smith, Public Citizen, Inc.; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Alicia Calzada, Texas Press Association; Perry Fowler, Texas Water Infrastructure Network (TxWIN); Karen Hadden)

Against — None

On — Dominic Giarratani, Texas Association of School Boards

BACKGROUND: Local Government Code, ch. 176 requires local government officers and vendors to file conflicts disclosure statements and questionnaires with the records administrator of the local governmental entity. Failing to file required statements can be a class C misdemeanor (maximum fine of $500).

The 83rd Legislature in 2013 enacted SB 1773 by Huffman, which created a select interim committee to study and review statutes and regulations related to ethics. In its report to the 84th Legislature, the committee recommended amending Local Government Code, ch. 176 to establish consistency in state and local procurement laws.

DIGEST: CSHB 23 would change provisions in Local Government Code, ch. 176 requiring disclosure of certain relationships and gifts involving vendors

and local government officers. The bill also would impose greater penalties for violations involving higher-value contracts.

Definitions. The bill would make changes to the definition of "local government officer" to include an agent of a local government entity who exercised discretion in the planning, recommending, selecting, or contracting of a vendor. The term "agent" would include an employee. Water districts would be added to the definition of a local governmental entity.

The bill would add a new definition for "vendor" as a person who entered or sought to enter into a contract with a local governmental entity. This would include a person who sought to influence, on behalf of a vendor, a contract award made by a local governmental entity, or who was an agent of a vendor. The term also would include an officer or employee of a state agency when that individual was acting in a private capacity to enter into a contract. The bill would specify that state agencies would not be considered vendors except for Texas Correctional Industries, a department within the Texas Department of Criminal Justice that works with prisoners to produce license plates, furniture, and other goods.

"Family relationship" would be defined as a relationship between two persons within the third degree by consanguinity or the second degree by affinity.

The bill would define "gift" as a benefit offered by a person, including food, lodging, transportation, and entertainment. The term would exclude from the definition those type of benefits when offered on account of kinship or a personal, professional, or business relationship independent of the recipient's official status by:

- a local government officer or officer's family member to another officer or family member of the same entity; or
- a vendor or vendor's family member to another vendor of the same local government entity or that vendor's family member.

Disclosure requirements. CSHB 23 would make changes to local government officer conflicts disclosure statements and vendor conflict-of-

interest questionnaires that are filed with the records administrator of the local governmental entity. The bill would extend disclosure requirements to certain employees involved in the procurement process and would require disclosure of familial relationships between vendors and government officers.

Local government officers. CSHB 23 would lower the monetary threshold for reporting gifts from a vendor. A local government officer would have to report gifts of more than $100 in aggregate value (previously $250) received in the 12-month period preceding the date the officer becomes aware that:

- a contract had been executed;
- the local entity was considering entering into a contract; or
- the vendor had a family relationship with the local government officer.

A local government officer would not be required to disclose gifts of food accepted by the officer or family member as a guest of a vendor. A local government officer would be required to disclose lodging, transportation, or entertainment accepted by the officer or a family member as a guest of a vendor.

A local government officer would not be required to file a statement if the local entity or vendor was an administrative agency created to supervise performance of an interlocal contract.

Vendors. The bill would add to disclosure requirements for vendors who had a business relationship with a local governmental entity. Such vendors would be required to file a completed conflict of interest questionnaire if the vendor had a family relationship with a local government officer or if the amount of a contract executed or under consideration between the vendor and local governmental entity exceeded $1 million.

A vendor would be required to describe each employment or business relationship with a corporation in which a local government officer held ownership interest of 1 percent or more, a reduction from 10 percent or more in current law.

A person who was both a local government officer and a vendor would be required to file the questionnaire only if the person entered or sought to enter into a contract with the local governmental entity or was an agent of a person who entered or sought to enter into a contract with the local governmental entity.

Records. A records administrator would be required to maintain a list of local government officers of the local entity and make the list available to the public and any vendor who could be required to file a conflict of interest questionnaire.

Enforcement. The bill would make it an offense for a local government officer to knowingly fail to file a required conflict disclosure statement by 5 p.m. on the seventh business day after the date on which the officer became aware of facts that required the filing.

A vendor would commit an offense for knowingly failing to file the required questionnaire or to file an updated questionnaire by 5 p.m. on the seventh business day after the date on which the vendor became aware of facts that required the filing or an event that would make a previously filed questionnaire incomplete or inaccurate.

An offense would be:

- a class C misdemeanor (maximum fine of $500) if the contract amount was less than $1 million or if there was no contract amount;
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the contract was at least $1 million but less than $5 million; or
- a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the contract amount was at least $5 million.

A local governmental entity could reprimand, suspend, or terminate an employee who knowingly failed to comply with a disclosure requirement. The governing body could, at its discretion, declare a contract void if the governing body determined that a violation of ch. 176 had occurred.

The Texas Ethics Commission would be required to revise conflict disclosure statements to conform to the bill as soon as practicable after the effective date.

The bill would take effect September 1, 2015, and would apply only to an event requiring disclosure that occurred on or after that date.

SUPPORTERS SAY:

CSHB 23 would expand and clarify requirements for disclosing possible conflicts of interest involving vendors and local government officials and employees. Such disclosure could deter self-dealing and help ensure a fair playing field among vendors seeking to do business with local entities.

Decisions by the Legislature and voters in recent years have set the stage for increased public spending on local infrastructure improvements, such as water projects. As more state funds are used by local officials to procure services, safeguards need to be in place to ensure that local procurement processes are ethical and that public funds are spent responsibly.

Current disclosure laws are confusing and can make it difficult for affected parties to find the information that applies to them. The bill would include clearer definitions that could make it easier for both government officers and vendors to know what to disclose. By expanding the definition of local government officer to include employees, the bill would apply disclosure requirements to individuals with significant procurement process responsibilities who were not covered under current law. The bill also would define the type of private sector actor who would constitute a vendor subject to disclosure requirements.

The bill would require the disclosure of familial relationships — as opposed to just business relationships — between vendors and decision-makers. It would close a loophole that allowed parties to avoid disclosing trips and entertainment and would lower the threshold for disclosure of gifts.

The public would be able to learn the identities of certain vendors who were proposing or had contracts exceeding $1 million. The bill also would shine additional light on officials who had even a small ownership interest

in a corporation doing business with the local entity.

The bill would not make currently lawful conduct unlawful. It simply would provide more disclosure of relationships between vendors and public employees. Disclosure of potential conflicts of interest would help create a fair process for all vendors by ensuring that local decision makers were not influenced by gifts and relationships.

It would be appropriate to tie penalties to the size of the contract at issue. The proposed tiered penalties would recognize that larger contracts are more likely to be subject to improper influence.

OPPONENTS SAY:

CSHB 23 would establish new regulations and increased penalties that could be unnecessarily onerous for both local government employees and vendors. The ability of a local governing board to void a contract would create uncertainty for vendors.

The inclusion of local government employees who are involved in planning a procurement is overly broad and could result in employees who had no real involvement in selecting a vendor being subject to criminal penalties for failing to file a disclosure form. It would be better to limit disclosure requirements to those employees who were involved in recommending and selecting a vendor.

The requirement for certain vendors to file conflict-of-interest questionnaires for any contract under consideration that would exceed $1 million could create different standards for disclosure between vendors with existing business relationships with the local entity and new vendors proposing large contracts. One way to treat vendors equally could be to require any vendor of an executed contract exceeding $1 million to file a questionnaire.

It is unclear whether the bill would impact certain membership organizations that have contracts with local governments. These organizations may provide services to local government officials but are not vendors in the traditional sense.

SUBJECT: Contact information in agreement to allow shooting across a property line

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 6 ayes — Guillen, Frullo, Larson, Márquez, Murr, Smith

0 nays

1 absent — Dukes

WITNESSES: For — None

Against — None

On — Kevin Davis, Texas Parks and Wildlife Department

BACKGROUND: Under Parks and Wildlife Code, sec. 62.0121, a person commits an offense if, while hunting or shooting recreationally, the person knowingly discharges a firearm and the projectile from the firearm travels across a property line.

It is a defense to prosecution if the person hunting or shooting has a written agreement with any person who owns property on either side of each property line crossed by the projectile that allows the person to discharge a firearm on, over, or across the property or property line. The written agreement must:

- contain the name of the person allowed to hunt or engage in recreational shooting;
- identify the property on either side of the property line crossed by the projectile; and
- be signed by any person who owns the property on either side of the line crossed by the projectile.

DIGEST: HB 3390 would require the written agreement allowing a person to shoot on, over, or across another person's property or property line to include, along with the information already required, the telephone number and

mailing address of the hunter or recreational shooter.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

By requiring a telephone number and address in the written agreement to shoot across a property line, HB 3390 would help law enforcement officials contact people who had permission to hunt or recreationally shoot on a landowner's property if there were action that required an investigation. The bill would facilitate dialogue between neighbors by encouraging them to have written agreements with detailed information that made it easier to get in touch with one another.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Limiting penalties in environmental suits brought by local governments

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Morrison, E. Rodriguez, Isaac, Kacal, K. King, P. King, E. Thompson

1 nay — Reynolds

1 absent — Lozano

WITNESSES: For — Christina Wisdom, Texas Association of Manufacturers; George Christian, Texas Civil Justice League; (*Registered, but did not testify*: Chris Miller, AECT; Jennifer Newton, AGC of Texas - Highway, Heavy; Gary Gibbs, American Electric Power Co.; Adam Burklund, American Insurance Association; Adrian Acevedo, Anadarko Petroleum Corp.; Michael Peterson, AT&T; Dennis Kearns, BNSF Railway and Texas Railroad Association; Charlene Heydinger, BP; Tom Sellers, ConocoPhillips; Kinnan Golemon, Devon Energy, Shell Oil Company, Austin White Lime; Warren Mayberry, DuPont; Martin Allday, Enbridge; Grant Ruckel, Energy Transfer; Samantha Omey, ExxonMobil; Kelly McBeth, Gas Processors Association, Martin Companies; Mike Meroney, Huntsman Corp., BASF Corp., and Sherwin Alumina, Co.; Lee Loftis, Independent Insurance Agents of Texas; Todd Morgan, International Paper; Bill Oswald, Koch Companies; Mance Zachary, Luminant; Steve Carr, National Waste and Recycling Association Texas Chapter, Republic Services; Julie Moore, Occidental Petroleum; Mike Hull, Texans for Lawsuit Reform; Bill Stevens, Texas Alliance of Energy Producers; Stephen Minick, Texas Association of Business; Hector Rivero, Texas Chemical Council; Lisa Kaufman, Texas Civil Justice League; Matt Burgin, Texas Food and Fuel Association; Mari Ruckel, Texas Oil and Gas Association; Donald Ward, Texas Pest Control Association; Thure Cannon, Texas Pipeline Association; Daniel Womack, the Dow Chemical Company; Tara Snowden, Zachry Corporation; Chris Macomb)

Against — Steve Hupp, Bayou Preservation Association; Terence O'Rourke, Harris County; John Odam and Cathy Sisk, Harris County; R.

Jack Cagle, Harris County Precinct 4; Cyrus Reed, Lone Star Chapter; Tom "Smitty" Smith, Public Citizen, Inc.; Jackie Young and Sam Braun, San Jacinto River Coalition; Donald Lee, Texas Conference of Urban Counties; Ryan Fite, Travis County and the Travis County Attorney; (*Registered, but did not testify*: Lindsay Lanagan, City of Houston; David Foster, Clean Water Action; Jim Allison, County Judges and Commissioners Association of Texas; Anne Clark, Environment Texas; Robin Schneider, Texas Campaign for the Environment; David Weinberg, Texas League of Conservation Voters; Ware Wendell, Texas Watch; Deece Eckstein, Travis County Commissioners Court; Debra Baker; Lou Macnaughton)

On — Bryan Blevins, Texas Trial Lawyers Association; (*Registered, but did not testify*: Jon Niermann, Office of the Attorney General; Caroline Sweeney, Texas Commission on Environmental Quality)

BACKGROUND: Water Code, ch. 7 authorizes the Texas Commission on Environmental Quality (TCEQ) to enforce certain provisions of the Water Code and the Health and Safety Code, including assessing administrative or civil penalties against violators.

Under sec. 7.053, TCEQ is required to consider certain factors when determining amounts for administrative penalties. These include:

- the nature, circumstances, extent, duration, and gravity of the prohibited act;
- the impact of the violation on certain factors, such as air and water quality; and
- the history and extent of previous violations committed by the alleged violator and the degree of culpability.

Local governments also may institute a civil suit against a person who has committed, is committing, or is threatening to commit certain violations of the Water Code or Health and Safety Code in a district court by its own attorney for injunctive relief, civil penalty, or both, as provided by sec. 7.351. Barring certain exceptions, a civil penalty recovered must be divided equally between the state and the local government that brought the suit, under sec. 7.107.

DIGEST:

CSHB 1794 would add new provisions to the enforcement chapter of the Water Code to limit the civil penalty that a person could be assessed resulting from a suit brought by a local government. Total penalties would be limited to $4.3 million, and daily penalties could be between $50 and $25,000 for each day of each violation.

The bill would require the trier of fact in a suit brought by a local government to consider the factors described in Water Code, sec. 7.053, such as the nature of the act and its impact, in determining the appropriate civil penalty.

CSHB 1794 would require that a local government bring a civil suit not later than five years from the date the violator notified the commission of the violation in writing or the date the violator received a notice of enforcement from the commission regarding the violation, whichever was earlier.

The bill would not limit the state's authority to pursue the assessment of a civil penalty under this chapter.

The bill would take effect September 1, 2015, and would apply only to violations that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1794 would place reasonable limits on the total amount of civil penalties that could be assessed for violations committed by companies or individuals who were responsible for cleaning up environmental violations under the Water Code. Civil penalties, which may be assessed on top of remediation costs or damages paid under other types of suits, take away from the resources an individual or companies could use toward clean-up efforts. They also do not provide a deterrent after the fact. Because the awards go to the local government and state coffers, they also do not assist victims in recovering losses or provide any other benefit related to the violation.

Companies need certainty regarding regulations, including penalties, and can operate more efficiently and productively when they know what to expect. This bill would help provide that certainty. Being subject to

penalties of unlimited amounts for violations that occurred well in the past is unreasonable. Excessive or unpredictable penalties could have a negative effect on the growth of industry in the state and on the willingness of individuals to self-report and remediate violations.

Moreover, because property often changes hands over time, the threat of large monetary penalties will discourage today's businesses from purchasing, cleaning up, and re-purposing land that was contaminated by previous owners. This, in turn, could lead to more abandoned and un-remediated areas.

The bill would preserve TCEQ's authority, both as a delegate of the Environmental Protection Agency to pursue violators of environmental laws and as an entity that can assess penalties outside of the limitations the bill would place on suits brought by local governments.

CSHB 1794 would not prevent local governments from filing suit for past violations, but it would require them to bring such suits within a certain reasonable window. The five-year time limit would be triggered when a violator notified the commission in writing that a violation had occurred or received a notice of enforcement from the commission about an alleged violation. Violations that occurred in the past could be pursued within five years of the date of the earlier of these notifications.

The bill would not interfere with the ability of individuals or local governments to pursue civil or criminal lawsuits for damages to individuals or their property. It would provide some assurance to those who were acting in good faith that they would not be penalized by local governments excessively for past actions, beyond the amount of actual damages. The bill also would leave discretion with the state to pursue additional amounts in civil penalties if warranted.

OPPONENTS SAY:

CSHB 1794 would hinder the ability of local governments to hold accountable individuals or companies that had caused harm to the environment or public health. Suing for penalties is different from suing for damages or requiring clean-up efforts, and it has a different purpose — to deter and punish. Local governments sometimes need this enforcement mechanism to send a strong message about protecting the environment.

There is no evidence that this power has been abused in the past, and there is no need to limit local governments by capping the amount of penalties they could recover in a suit or by placing time restrictions on pursuing cases.

TCEQ does not have the resources to pursue complex, labor-intensive cases. Local governments should be able to take on that role without hindrance, and the money they recover helps to fund their enforcement efforts. TCEQ is required to be a "necessary, independent party" to any local government's case of this kind, according to current law, and penalties assessed must be split evenly between the local entity and the state. However, the bill does not address how there could be cap on the amount the local government could recover in penalties but no cap on the amount the state could recover.

Establishing penalty limits could encourage some companies to make a business decision to plan on paying the penalties if the cost of preventing or remediating an environmental problem were higher. Clean-up in some cases of this type can run into the hundreds of millions of dollars.

Federal regulations require certain penalty minimums and maximums for every violation. The bill would set an overall cap for each case, not for each violation, and some cases involve many violations per day over many days. For this reason, some individual violations might not be associated with a penalty amount, which could conflict with the federal requirement for minimum and maximum penalty amounts. This could affect TCEQ's federally delegated authority over environmental regulation in the state.

The bill would address time restrictions for suits against violators who received a notice of enforcement but not those who received a notice of violation. Therefore, it is not clear how the five-year rule would apply to violators who received a notice of violation, which is much more common.

CSHB 1794 would send a general message that the state takes it easy on polluters. Moreover, although the bill would not hinder individuals from filing suits for damages to their health or property, many do not have the

means to hire attorneys and pursue such cases. Therefore, local governments can play a strong role in penalizing polluters in egregious cases.

NOTES: The companion bill, SB 1509 by Hancock, is scheduled for public hearing on April 28 in the Senate Natural Resources and Economic Development Committee.

SUBJECT: Creating tax incentives for commercializing university research

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 6 ayes — Elkins, Walle, Galindo, Gonzales, Leach, Scott Turner

0 nays

1 absent — Gutierrez

WITNESSES: For — Shawn Cloonan, Texas Medical Center; (*Registered, but did not testify*: Fred Shannon, Hewlett Packard, Texas Association of Manufacturers; Martin Hubert, Rice University; Sarah Matz, TechAmerica)

Against — None

On — Mark Clarke, University of Houston; Julie Goonewardene, University of Texas System; (*Registered, but did not testify*: Sharon Hersh, Comptroller of Public Accounts)

DIGEST: CSHB 590 would allow the formation of for-profit special purpose corporations created to commercialize research conducted at universities and medical research facilities in the state. The bill would exempt these research technology corporations from property, sales, and franchise taxes for the 15-year lifespan of these companies.

Requirements. The bill would allow individuals to form a university research technology corporation for the exclusive purpose of commercializing technology developed and wholly or partly owned by an eligible university or medical center. To create a qualifying company, the founder would have to license the technology from the institution. The license could be contingent on the formation of the university research technology corporation. Companies whose activities extended beyond commercializing the licensed technology would not be eligible to become research technology corporations.

The research institution that licensed a technology to a university research technology corporation would have to be a shareholder at the company's inception and throughout its life in order for the company to qualify for the exemptions. The research institution could license any technology it owned to an affiliated research technology corporation.

University research technology corporations would have to be based in Texas, and more than 50 percent of any good produced or services performed would have to take place in the state.

The bill would limit the duration of university research technology corporations to 15 years. At the end of that period, the company could refile as a for-profit entity. The organizers of a university research technology corporation would be required to file the necessary documentation with the comptroller's office. A corporation that refiled would not be governed by other provisions in the bill, except that the corporation would be required to comply with Education Code, sec. 157.008 to obtain a tax exemption and would be subject to penalties described in Education Code, sec. 157.009 for noncompliance with corporate requirements.

Tax exemptions. The bill would provide tax exemptions for university research technology corporations. In order to qualify for the tax exemptions, a company would have to be based in Texas and engage exclusively in commercializing and developing technologies owned by an institution of higher education or a medical center. The bill would exempt qualifying companies from property taxes, sales and use tax, and the franchise tax.

Companies would be required to keep records of all of the taxes from which they had been exempted. If a university technology research corporation ceased to operate in Texas or ceased to do more than 50 percent of its business in Texas, it would be liable for the taxes from which it had been exempt the four calendar years preceding the year when noncompliance began. These penalties would be deposited in the general revenue fund. The comptroller would adopt rules to implement and administer the tax exemption.

A university research technology corporation would not be entitled to a property tax exemption on property that was owned by the corporation's organizer or director before the corporation's creation and was subject to taxation before becoming a university research technology corporation.

The bill would take effect January 1, 2016. The provisions that would exempt from taxation certain property of university research technology corporations would take effect following voter approval of CSHJR 64 by Elkins and would apply beginning in tax year 2016.

SUPPORTERS SAY:

CSHB 590, in conjunction with voter approval of CSHJR 64 by Elkins, would create a more favorable tax environment in which to encourage the development and commercialization of technology by Texas institutions of higher education. Although Texas generally has a regulatory climate favorable to business, many startups that make use of university patents have moved out of state to seek more advantageous tax treatment of their investments. The proposed amendment would allow the Legislature to address this drain of university intellectual property by offering incentives for startups partnering with universities.

Together with CSHJR 64, CSHB 590 would help support economic development by putting university or medical research to commercial use without any cash outlays from the state. This incentive program could help faculty recruitment by creating a potentially lucrative outlet for their research.

The bill would not lead university administrations to emphasize commercial research because universities already are aware of the need to find commercial uses for the patents and technologies they develop. This bill and proposed amendment merely would channel those efforts in the most productive way for Texas.

Because universities would be shareholders of university research technology corporations, the revenue these corporations brought in could be used to fund universities' centers for technology development and transfer, which facilitate public-private partnerships between universities and industry or investors. In addition, universities could license the

technologies to the university research technology corporations, and the license fees also could be used to support centers for technology development and transfer.

Although tax revenue might decline somewhat at first, the tax breaks enabled by the joint resolution would pay for themselves during the 15-year life of the university research technology corporations because of the ancillary businesses that would emerge as a result of the commercialized research and technology.

OPPONENTS SAY:

CSHB 590 would enable legislation that could reduce revenue available to local governments and school districts. The Legislature should be mindful of the joint resolution's potential impact on these local taxing entities, particularly school districts that would be held harmless for such losses at state expense.

University income from patents does not cover the costs of running centers for technology development and transfer. Before encouraging further commercialization of university research, the Legislature should develop metrics to better understand the benefits commercialization may offer for universities and students.

CSHB 590 inappropriately would create tax breaks to support university research. Many Texans have concerns about certain types of research conducted at some universities, and such research should not be encouraged by tax exemptions provided by the state.

NOTES:

CSHJR 64 by Elkins, the joint resolution that would authorize the Legislature to exempt from taxation certain property of university research technology corporations, appears on today's Constitutional Amendments Calendar.

The author intends to offer a floor amendment striking the language that would permit research technology companies to refile for their status after 15 years.

The Legislative Budget Board's fiscal note estimates an indeterminate cost to the state and units of local government depending on the number

of special-purpose corporations that might be formed under the bill and the extent of their business activities.

SUBJECT: Requiring a search warrant for body cavity search during traffic stop

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association; Teresa Beckmeyer; Joe Palmer; Jason Vaughn)

Against — Christopher Jones, the Combined Law Enforcement Associations of Texas (CLEAT); (*Registered, but did not testify*: Bill Elkin, Houston Police Retired Officers Association; Lon Craft, Texas Municipal Police Association)

On — (*Registered, but did not testify*: Phillip Adkins and Justin Chrane, Texas Department of Public Safety)

DIGEST: CSHB 324 would amend Code of Criminal Procedure, ch. 18 to require an officer to obtain a search warrant before conducting a body cavity search during a traffic stop. A body cavity search would include an inspection of a person's anal or vaginal cavity in any manner.

This bill would take effect September 1, 2015.

SUPPORTERS SAY: CSHB 324 would help protect Fourth Amendment rights against unreasonable searches and seizures by requiring an officer to obtain a search warrant to conduct a body cavity search during a traffic stop.

Body cavity searches during a traffic stop are intrusive and unsanitary, and many law enforcement agencies have recognized this by implementing policies that require officers to obtain a warrant to conduct this type of search. This bill would bring uniformity to state policy on

requirements for cavity searches at traffic stops.

Although requiring an officer to obtain a warrant may take some additional time, body cavity searches are such a substantial invasion of privacy that this is necessary to ensure the search is used only when appropriate. The bill would not cause a person to be brought into a police station unnecessarily because the person still may consent to a body cavity search without a warrant if the person wants to be cleared immediately.

Recent cases of improper body cavity searches in Texas are not isolated incidents but reflect a larger pattern. Some police officers conduct these searches without a warrant because they are eager to uncover drugs, and this bill would provide a necessary check on such practices.

Police officers generally are required to obtain warrants to search an individual's car or home, so searching an individual's body should demand equal if not more stringent requirements. Requiring a warrant for all body cavity searches also would help prevent officers from improperly profiling individuals in low-income communities where body cavity searches are more prevalent.

Violating an individual's Fourth Amendment right against an unreasonable search could lead to exclusion of evidence collected against a dangerous criminal. Requiring all police officers to obtain a warrant would ensure that the search had appropriate probable cause and was approved by a magistrate, which would protect any valuable evidence collected from exclusion.

OPPONENTS SAY:

CSHB 324 would inappropriately remove the authority of trained law enforcement officers to decide when an immediate threat during a traffic stop warranted a body cavity search.

Officers may conduct a traffic stop with reasonable suspicion alone, and requiring a warrant with probable cause for body cavity searches could delay law enforcement. It also could cause innocent individuals to unnecessarily be brought into a police station while awaiting the warrant when they could have been cleared immediately by conducting the search at a traffic stop.

Improper searches at traffic stops are not a systemic problem. It is not necessary for all police officers to be restrained in exercising judgment and doing their jobs because of a few isolated incidents of bad judgment by individual police officers.